

Congress of the United States
Washington, DC 20515

December 17, 2020

The Honorable Chad F. Wolf
Acting Secretary
Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

Mr. Tony H. Pham
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, DC 20536

Mr. Joseph Edlow
Deputy Director for Policy
U.S. Citizenship and Immigration Services
301 7th Street, SW
Washington, DC 20528

Dear Acting Secretary Wolf, Acting Director Pham, and Deputy Director Edlow:

We write to express our serious concerns regarding reports that the Department of Homeland Security (DHS) is proceeding with the removal of asylum seekers who have not been provided a full and fair opportunity to present their claims for relief. We ask that you direct your staff to take immediate steps to identify and suspend the removal of individuals who were denied an appropriate credible fear screening due to rules and policies that have since been enjoined or vacated by federal courts. Such individuals should receive appropriate screenings, and where a credible fear of persecution is found, a full opportunity to have their asylum or related applications for relief adjudicated.

As you are aware, in July 2020, the D.C. Circuit Court of Appeals struck down the U.S. Citizenship and Immigration Services (USCIS) policy guidance implementing the Attorney General's decision in *Matter of A-B-* in the credible fear screening context, on grounds that the guidance impermissibly raised the threshold for such screenings for survivors of domestic and gang violence.¹ In addition, a district court struck down the May 2019 USCIS Credible Fear Lesson Plan, finding that it directly conflicts with the expedited removal statute and its implementing regulations.² Similarly, the July 2019 interim final rule that bars from asylum eligibility individuals who did not apply for and receive a denial of asylum in a third country through which they traveled was both vacated and separately enjoined in the Ninth Circuit Court of Appeals.³ Although a new final version of this rule was published

¹ *Grace v. Barr*, No. 19-5013 (D.C. Cir. 2020).

² *Kiakombua v. Wolf*, No. 19-cv-01872 (D.D.C. 2020). The federal district court for the District of Columbia has struck down as unlawful several other policies and procedures related to credible fear screenings. See, e.g., *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 37 (D.D.C. 2020); *A.B.-B. v. Morgan*, No. 20-cv-846 (D.D.C. 2020).

³ *Capital Area Immigrants' Rights Coalition v. Trump*, No. 19-cv-2117 (D.D.C. 2020); *East Bay Sanctuary Covenant v. Barr*, No. 19-cv-04073 (9th Cir. 2020).

on December 17, 2020, it will not take effect until January 19, 2021, and should not be applied at this time.⁴

These policies have resulted in the expedited removal of legitimate asylum seekers, many of whom were returned to their country of persecution with devastating consequences. We were deeply disturbed, for example, by the removal of numerous Cameroonian asylum seekers in October and November, who were reported to have been arrested or violently mistreated upon their return due to their ethnicity or political affiliation.⁵ Reports indicate that many such individuals were removed notwithstanding pending motions to reopen or petitions for review based on the aforementioned vacated or enjoined policies.⁶ Further, we understand that a group of 28 children and their parents are facing imminent removal based on negative credible fear determinations made pursuant to these policies.⁷

These individuals—and all others denied a fair opportunity to seek asylum as a result of policies that have been suspended or struck down as unlawful—should have their cases reviewed and receive credible fear screenings under appropriate standards. If they are found to meet the initial credible fear threshold, they must be afforded a full opportunity to seek asylum or other relief for which they may be eligible.

Thank you for your urgent attention to this matter.

Sincerely,



Jerrold Nadler
Chairman
House Committee on the Judiciary



Zoe Lofgren
Chair
Subcommittee on Immigration and Citizenship



Nita M. Lowey
Chairwoman
House Committee on Appropriations



Lucille Roybal-Allard
Chairwoman
House Appropriations Subcommittee on
Homeland Security

⁴ See 85 Fed. Reg. 82260 (Dec. 17, 2020). In addition, the final rule makes no substantive changes to the interim rule, and as explained by the Ninth Circuit in *East Bay Sanctuary Covenant v. Barr*, “does virtually nothing to ensure that a third country is a safe option.” No. 19-cv-04073 (9th Cir. 2020). Like the interim rule, the final rule is therefore substantively flawed and inconsistent with section 208 of the Immigration and Nationality Act.

⁵ John Washington, *Cameroonian Asylum Seekers Say They Face Violent Persecution Upon Deportation*, THE NATION (Nov. 9, 2020), <https://www.thenation.com/article/politics/cameroon-asylum-deportation-immigration/>.

⁶ Others claim, in a complaint pending with the DHS Office for Civil Rights and Civil Liberties, that they had not exhausted their procedural due process rights prior to being slated for removal. See October 7, 2020 [complaint](#) filed by the Cameroon American Council, Freedom for Immigrants, Louisiana Advocates for Immigrants in Detention, Southern Poverty Law Center (SPLC), Detention Watch Network (DWN), Natchez Network, Haitian Bridge Alliance, and Families for Freedom.

⁷ See, e.g., Amnesty International, *Immigrant Children and Attorneys’ Pleas: Stop Family Deportations* (Nov. 18, 2020), <https://www.amnestyusa.org/press-releases/immigrant-children-and-attorneys-plea-stop-family-deportations/>. The U.S. Court of Appeals for the District of Columbia issued a temporary stay of removal on November 23, 2020, but that stay was recently lifted. *M.D.C. v. Trump*, No. 20-5347 (D.C. Cir. 2020).



**U.S. Citizenship
and Immigration
Services**

March 2, 2021

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chair Nadler:

Thank you for your December 17, 2020 letter to the Department of Homeland Security. Secretary Mayorkas asked that I respond on his behalf.

U.S. Citizenship and Immigration Services (USCIS) credible fear determinations are not subject to motions to reopen or reconsider before the agency or the courts. Nonetheless, governing regulations provide that the avenue for an applicant to challenge a USCIS screening determination is to seek de novo review of that screening determination from an immigration judge. USCIS can, however, solely in its own discretion, reconsider its screening determination where it believes such action is warranted.

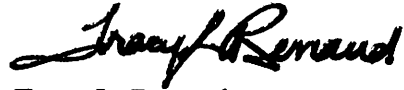
USCIS has completed a review and has provided updates regarding the outcome for each case separately in accordance with our standard procedures. The asylum headquarters-level review examined the information contained in correspondence and any follow up conducted by USCIS. As a result of this review, USCIS reversed screening determinations for 14 families (comprising 33 individuals) and issued Notices to Appear to those individuals (and notified their attorneys).

These families were screened initially under the “reasonable possibility” standard required by the Third Country Transit Bar Interim Final Rule (IFR) which was then in effect. When USCIS does choose to reconsider a case in its sole discretion, it applies the legal standards in place at the time of reconsideration. Because the courts struck down the IFR before these determinations were reconsidered, they were re-examined under the lower “significant possibility” standard. Under that standard, USCIS found that members of these 14 families, comprising 33 individuals, established a significant possibility that they could demonstrate in a full hearing before an immigration judge that they had been persecuted in the past or have a well-founded fear of persecution or likelihood of torture. The expedited removal orders for members of these families have been canceled. For the members of 12 families, comprising 22 individuals, the USCIS review did not result in a change in the negative credible fear determinations.

The Honorable Jerrold Nadler
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Thank you again for your letter. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Sincerely,

A handwritten signature in black ink that reads "Tracy L. Renaud". The signature is written in a cursive style with a large, stylized initial 'T'.

Tracy L. Renaud
Senior Official Performing the Duties of the Director